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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

FILE:

Office: TEXAS SERVICE CENTER Date:

DEC 02 2010

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director’s ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

This petition, filed on July 27, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an artist. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner did not initially claim to meet this criterion. On appeal, the petitioner submits a September 13, 1997 letter to him from the [REDACTED] stating:

On behalf of the [REDACTED] I am pleased to advise you that your submission to our Art Rental jurying titled [REDACTED] tied for first place in the jurying. Both of the jurors were very impressed with all your submissions, but this piece was particularly intriguing and impressive.

The first prize and second prize have a combined monetary value of [REDACTED] which we have divided equally. Please find a cheque enclosed. Congratulations!

The preceding first place prize from the [REDACTED] reflects local recognition rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. There is no documentary evidence demonstrating that the petitioner's prize is recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the visual arts field. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) expressly requires evidence of qualifying *prizes* or *awards* in the plural. The petitioner has documented his receipt of only a single non-qualifying prize. Accordingly, the petitioner has not established that he meets this regulatory criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted documentation showing that he and four others in [REDACTED] incorporated a society in [REDACTED] entitled the [REDACTED]. The petitioner also submitted evidence documenting the activities of the [REDACTED] from 2001 – 2003 such as meeting agendas and a newsletter dated August 27, 2002. The submitted documents identify the petitioner as founder, president, and a member of the board of directors of the [REDACTED]. For instance, the agenda for the [REDACTED] on November 29, 2002 includes a [REDACTED] prepared by the petitioner stating:

² The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

Founded in 2001, the [REDACTED] was registered as a non-profit organization in [REDACTED]. I as founder of the society have been volunteering in the arts & cultural organizations since I arrived in [REDACTED] 1996. . . . I registered the [REDACTED] primarily with a simple [REDACTED] depending mainly on the internet. I was looking in the mean time for a local space to act as an arts community in the [REDACTED]. And it happened very soon with I took over the [REDACTED] in January 2002.

For me it was a full time commitment as a director of the Society as well as the manager of the [REDACTED]. Without the financial and labor support from [REDACTED] this would never have been possible.

The August 27, 2002 [REDACTED] newsletter states:

[REDACTED] is locally presenting services in [REDACTED] in the [REDACTED]. All artists and art groups are invited to participate.

* * *

[REDACTED] has a board of directors who are selected once a year in January.

[REDACTED] is getting support from [REDACTED]

and learning [REDACTED]

* * *

Members: Artists who have had art show in [REDACTED] are automatically members of [REDACTED]

The petitioner also submitted a 2002 – 2003 [REDACTED] list for [REDACTED] which includes a biography of himself that states, in part: [REDACTED] are [the petitioner's] own personal business. He later incorporated the [REDACTED] in 2001. He was the manager of the [REDACTED] started in January 2002.”

The preceding documentation indicates that artists who have had an art show at the local [REDACTED] managed by the petitioner automatically become members of the [REDACTED]. There is no evidence showing that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the visual arts. Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(ii) expressly requires qualifying membership in “associations” in the plural. The petitioner has only documented a single non-qualifying association membership held by him. Accordingly, the petitioner has not established that he meets this regulatory criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought.

Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted material about him in both the January/February 1998 and the March/April 2004 issues of [REDACTED], a free [REDACTED]. The petitioner also submitted a September 13, 2002 article entitled [REDACTED]

[REDACTED] in the occasion of the September 11 [REDACTED] a free [REDACTED]

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translation accompanying the article in [REDACTED] was not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). Further, there is no documentation (such as circulation evidence) showing that [REDACTED] equate to professional or major trade publications or other major media in [REDACTED] or any other country.

The petitioner submitted a May 11, 2010 letter from [REDACTED] a television reporter for the [REDACTED] stating that she interviewed the petitioner on June 19, 2008 and that his interview was broadcast on a [REDACTED] program entitled [REDACTED] on June 26, 2008. The preceding televised interview post-dates the petition's June 27, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's June 2008 televised interview in this proceeding. Nevertheless, there is no supporting evidence establishing that the [REDACTED] program is a form of major media in the United States or any other country. Further, a television interview does not equate to "*published material about the alien.*" [Emphasis added.]

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted a May 10, 2010 letter from [REDACTED] “[The petitioner] actively organized and juried our art exhibitions including the [REDACTED] – 2006,” the “25th Anniversary celebration of [REDACTED] – 2007” and the [REDACTED] which was broadcasted by [REDACTED] TV in 2008.” [REDACTED] letter does not indicate the names of the artists evaluated by the petitioner or provide any specific details about the petitioner’s participation as an exhibition juror. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this instance, [REDACTED] letter lacks specificity and details, and is unsupported by any corroborative evidence demonstrating the petitioner’s actual participation as a judge of the work of others. Furthermore, there is no evidence showing that the petitioner had juried the “25th Anniversary celebration of [REDACTED] exhibition and the [REDACTED] [REDACTED] as of the petition’s June 27, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Without evidence documenting the specific dates of the petitioner’s participation, the petitioner has not established his eligibility as of the petition’s filing date.

On appeal, counsel states: “[The petitioner’s] participation as a judge of other artists was in the capacity as the president of the [REDACTED]. The petitioner’s appellate submission includes a document entitled [REDACTED] stating:

As [REDACTED] responsibilities include:

* * *

- Work with Art Programs director in scheduling and organizing events and selecting artists’ work to exhibit.
- Work with Art Programs director in formatting call for artistic submissions and adjudicating submitted works to select those appropriate to the gallery’s events and goals.
- Act as primary director at [REDACTED] in the selection and types of works exhibited.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others” in the field. The undated, self-serving list of responsibilities prepared and submitted by the petitioner on appeal does not equate to evidence of his actual participation as judge of the work of others. For instance, the list does not specify the art work judged by the petitioner, the names of the individuals whose work he evaluated, and the date the selections were performed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, there is no documentary evidence showing that the petitioner had actually participated as a judge of the work of others at the time of filing the petition. Moreover, the phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually, as specified by 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance involving routine duties inherent to one's job responsibilities. Additional deficiencies pertaining to the submitted documentation will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted various letters of support and documentation pertaining to his art work.

states that he serves on the and is a past-president of the organization. further states:

publishes a calendar every year that highlights the art and culture of the community. Nationally and internationally acclaimed artists are invited to submit original pieces of work for publication in the calendar. In addition, as part of our organization's annual and street festival, we have organized the

* * *

In my function as organizer of the I came to meet and know [the petitioner]. Prior to personally meeting [the petitioner], I became familiar with his work as I investigated who would be the appropriate artists to participate in this event. As I do in reviewing the work of all potential participants, I took every opportunity to learn about [the petitioner's] background and work. What is readily apparent is that [the petitioner's] contributions go beyond the highly acclaimed original pieces of contemporary art he has created, but to the education, promotion and intellectual aspects of the art world. For art to flourish, renew itself, and remain vibrant, there have to exist places where an artist can feel free and safe to express him or herself. Whether in Iran or in and now, hopefully in the United States, [the petitioner] has produced his own fine art and created the safe havens for other artists to thrive.

We note that arranging for the display of one's work is inherent to the visual arts. It does not follow that that every visual artist who successfully exhibits his own work or facilitates the exhibition of others' artwork has inherently made an original contribution of major significance to the field as a

whole. Further, there is no documentary evidence to support [REDACTED] opinion that the petitioner's original pieces of contemporary art are "highly acclaimed" in the visual arts field. Moreover, [REDACTED] does not specify which of the petitioner's pieces of contemporary art, educational accomplishments, and artistic safe havens equate to original contributions of major significance in the field or provide specific examples of indicating the extent of their impact on others in the field.

[REDACTED] states:

I have known [the petitioner] since 2005 where we met each other in [REDACTED] It was the opening of [REDACTED] a new center for arts and cultural events in the [REDACTED] Area. He was in charge of the gallery and the website of [REDACTED] where I displayed my art. After this meeting I found out more about [the petitioner] and his artistic family who had just moved from [REDACTED] He came to my gallery with his wife who is a professional [REDACTED] traditional singer and also I came to know that their two teenage daughters were also professional ballet dancers in [REDACTED] We were a good match to be associated with each other in Painting and music. I just hosted a fantastic art show of his personal collection in June; his impressionism and post impressionism works in oil in [REDACTED] . . . He played [REDACTED] in his opening that I enjoyed the combination of music and painting both by the same artist.

* * *

I want to share with him some of the future planning for [REDACTED] projects, one of them, the celebration of [REDACTED] and the great [REDACTED] poet of the 13th century.

* * *

He is an outstanding political artist and through his political cartoons reminded the world of the mass execution of political prisoners by [REDACTED] His art for peace series in his 911 exhibition in [REDACTED] was also extraordinary. He is also one of the persistent artists who were in search of identity in the modern art of [REDACTED] Identity is one of the struggles of the contemporary arts in [REDACTED]

* * *

I believe [the petitioner] is an exceptional talent. His multi-dimensional and extraordinary ability in science, politics and arts has given him a unique personality. His art also brings together multiple languages of visual arts (painting, calligraphy, digital video and animation), music and poetry. This unique quality of [the petitioner's] ability contributes a highly original value and significance to the fine arts field of endeavor.

[REDACTED] describes the petitioner's activities and art projects, but there is no supporting evidence showing that the petitioner's oil paintings, political cartoons, [REDACTED] series, calligraphy,

digital videos, animation, music, poetry, and involvement with [REDACTED] equate to original artistic contributions of major significance in the field.

a graphic artist and painter residing in [REDACTED] states:

I first became familiar with [the petitioner's] work in 1983, when an art exhibition that included his work was launched at [REDACTED]. This exhibit featured many known [REDACTED] artists, including [the petitioner]. This exhibit, and the artists involved, first came to my attention when they were trying to establish the first [REDACTED]. This association was to support the professional artists for their rights and benefits.

I first met [the petitioner] in January 2004 and have since followed his extraordinary development and achievements much closer. I have seen some of his original art work and cartoons, and I found particularly very interesting his work in the [REDACTED] called "the 911 exhibition" presented in [REDACTED] gallery in [REDACTED] held on Sep. 12, 2002. His use of color and form, creating virtual spaces was particularly appealing.

[The petitioner] is not only an exceptionally multi talented artist (painting, graphic art, music) with his own unique style, but also an innovative researcher. His research in [REDACTED] the Persian classical painting and his attempt to reinterpret it in a global context, has contributed immensely to our understanding of contemporary art and is a promising intellectual endeavor to bridge different cultural heritages. [The petitioner] has a prominent position among a new generation of artists who have tried to discover and also connect to their cultural origin, and consequently contributed more to the global art in general.

[The petitioner's] achievements and his contribution to the world of art and his message for peace and understanding in this particularly tense period is an asset for any country.

[REDACTED] does not specifically identify the works exhibited by the petitioner at [REDACTED] in [REDACTED] or explain how those works have significantly impacted the visual arts field. Further, there is no supporting documentary evidence showing that the petitioner's [REDACTED] is recognized throughout the field as an original contribution of major significance. We note here that the regulations contain a separate criterion regarding "display of the alien's work in the field at artistic exhibitions." 8 C.F.R. § 204.5(h)(3)(vi). The petitioner's art exhibitions will be addressed there. With regard to petitioner's [REDACTED] research, [REDACTED] does not provide any specific examples of how it has influenced others in visual arts field or been applied by independent art scholars. There is no evidence demonstrating that the petitioner's original work is recognized beyond his personal acquaintances at a level consistent with a contribution of major significance in the field.

[REDACTED] an artist residing in [REDACTED] states:

Although I had previously met [the petitioner] in [REDACTED] it was only after he recently interviewed me about the subject of contemporary [REDACTED] art and the identity crisis among the past generations of [REDACTED] modern artists that I became familiar with him and his art. This interview is to be published in [REDACTED] two online [REDACTED] magazines in USA and [REDACTED] run by [the petitioner].

I reviewed [the petitioner's] activities through various sources such as his websites, [REDACTED] [sic] the online encyclopedia, and other credible sources. Interestingly, I discovered that [the petitioner] has been associated with [REDACTED] the famous Art professor, critique, and research professional who has contributed immensely to fine arts in [REDACTED] for the past 40 years. I am confident to say that [the petitioner] proves to be an exceptional and talented Artist with multi-dimensional capacities in the fine arts (painting, graphic and music), as well as in web design and journalism. He is also a top research professional in the field of fine arts.

[The petitioner's] research in [REDACTED] classical painting, which is a deep study of the classical miniature painting, is a valuable source of reference for understanding the aesthetics of traditional Persian painting as well as a source of inspiration to interpret our contemporary art in a global context. Many of [REDACTED] artists, who are lost for the lack of cultural identity, will benefit from such analysis of their art history. [The petitioner] also studied [REDACTED] classical music to find out the similar artistic values in order to understand and improve [REDACTED] contemporary music in a global context. I really appreciate his highly original and significant contribution to fine arts.

[REDACTED] states that he was not familiar with the petitioner his artwork until being interviewed by petitioner recently and that his observations are based a review of the petitioner's activities through various sources such as petitioner's websites, [REDACTED] and other credible sources. [REDACTED] does not specifically identify the "other credible sources." Regarding information from [REDACTED] an online encyclopedia, there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the source. [REDACTED]

⁴ Online content from [REDACTED] is subject to the following general disclaimer:

[REDACTED] MAKES NO GUARANTEE OF VALIDITY. [REDACTED] is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . [REDACTED] cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields

[REDACTED], accessed on November 10, 2010, copy incorporated into the record of proceeding.

briefly mentions the petitioner's paintings, graphics, web design, journalism, [REDACTED] research, and music, but there is no supporting documentary evidence showing that the petitioner's work in these areas equates to original artistic contributions of major significance in the field.

[REDACTED] identifies himself as "an art professor teaching in many colleges and universities in [REDACTED] He further states:

[The petitioner] joined my art history and art critique courses as a student and became a member of the [REDACTED] in my own new private institute called [REDACTED] We were actively involved in several art projects until he and his family moved to [REDACTED] in 1996.

* * *

[The petitioner] is a gifted contemporary artist with a multi-dimensional capacity in science and politics.

* * *

[The petitioner] founded an institute of visual arts and music called [REDACTED] (1983-1996). It was an art gallery, a center for fine arts education and training and hosting meetings and art projects of distinguished artists and scholars such as myself

* * *

During this period of 1983 to 1996 [the petitioner] made highly original and significant contributions in two ways: 1) the originality of his fine art work, including oil paintings to commemorate the massacre of political prisoners by the [REDACTED] regime in the summer of 1988, political cartoons, series of portraits ([REDACTED] artists, poets, writers and musicians in a unique watercolor style) in a colander [sic], hosting and organizing a center for artists where, under his protection, new ideas could flourish in the otherwise hostile atmosphere.

In 1989 [the petitioner] studied the roots of [REDACTED] arts and as a result became actively involved in the aesthetics of Negargari (Miniature painting) and [REDACTED] traditional music. He made these interests as a focal point of academic research, part of which was published in limited editions by the [REDACTED] University in 1991. This work was of major significance because he was one of the few artists with a contemporary style who also remained original and true to his culture as well. The importance of his contribution in this regard cannot be overemphasized.

2) His important contributions continued, again not just his fine art and painting contributions, but his organizing and hosting opportunities for artists to be exhibited internationally. After immigrating to [REDACTED] the petitioner] continued to contribute to the arts community on an international level. He was the first in [REDACTED] to host such

large and influential multi-cultural exhibitions. He as founder and president of [REDACTED] (the [REDACTED] and [REDACTED] in [REDACTED] organized an exhibition, 45 selected members of the [REDACTED] sponsored by [REDACTED] held April 2004.

I learned recently that [the petitioner] has extended his research to [REDACTED] classical music and is going to perform and exhibit both music and visual arts in a contemporary presentation in the US. His synergistic combination of [REDACTED] visual art and classical music certainly constitutes a highly original and significant contribution to fine arts.

There is no supporting evidence documenting the reputation of the petitioner's [REDACTED] commemorative oil paintings, political cartoons, and series of watercolor portraits in a calendar or their significance to the field at large. Further, with regard to the petitioner's "academic research . . . which was published in limited editions by the [REDACTED] in 1991," we note that the regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions of major significance as a separate evidentiary requirement from scholarly articles. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least three separate criteria. Nevertheless, there is no evidence demonstrating that the petitioner's academic research is widely viewed by independent art scholars as an original contribution of major significance in the field. Finally, there is no documentary evidence showing that the [REDACTED] and Artpars exhibits organized by the petitioner, his [REDACTED] visual art works, and his classical music equate to original contributions of major significance in the field.

[REDACTED] states:

This is to verify that [the petitioner] has been associated with [REDACTED] Service on a contract basis as a graphic artist since September 2008. He has been in charge of daily design, production and updates of graphics and images for our website and in house projects. His artwork including logos, illustrations, slide shows and promotional materials are published on our website

The petitioner's work for [REDACTED] beginning in September 2008 post-dates the filing of the petition. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider subsequent developments in the petitioner's career in this proceeding. Moreover, the plain language of the regulation 8 C.F.R. § 204.5(h)(3)(v) requires original artistic "contributions of major significance in the field" rather than limited to his immediate employer.

[REDACTED] states:

I am writing . . . to confirm [the petitioner] as a well known artist nationally as a result of his creative and community work in [REDACTED] and the US. [The petitioner] joined [REDACTED] in 2004 and has been cooperating with us in many art programs since then. On December 16,

2007, I participated in a grand opening exhibition of the [REDACTED] where he held his solo art exhibition. [REDACTED] is a well-known organization founded by [the petitioner] in 2000. On behalf of [REDACTED] I delivered a speech in that event in support of his art and his art activities in the US.

The petitioner's solo exhibition at the grand opening of his [REDACTED] on December 16, 2007 post-dates the petition's July 27, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's December 16, 2007 exhibition in this proceeding. Nevertheless, there is no evidence showing that his work equates to artistic contributions of major significance in the field.

On appeal, the petitioner submits what counsel vaguely identifies as "several original contributions selected for publication." The petitioner's submission includes a publication entitled [REDACTED] bearing the dates [REDACTED]. There is no evidence indicating the significance of this church publication or its circulation. Moreover, it appears to have been published subsequent to the petition's filing date and therefore cannot be considered in this proceeding. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner also submits his artwork in the March 9, 2004 issue of [REDACTED] and his ink drawings in a 1985 calendar. There is no evidence demonstrating the circulation of these printed documents or that they constitute original contributions of major significance in the visual arts field.

In addressing the petitioner's evidence for this criterion, the director's decision stated that the documentation submitted by the petitioner did not establish that his work could be considered contributions of major significance in the field, outside of those with whom he has worked or been associated. We concur with the director's finding. In this case, the record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted others in his field at large. For example, the record does not indicate the extent of the petitioner's influence on others in the visual arts field, nor is there specific documentary evidence in the record demonstrating that the field has significantly changed as a result of his work. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the respect and admiration of his references, there is no evidence demonstrating that his work is recognized beyond his personal acquaintances such that it equates to original contributions of major significance in the field.

We cannot conclude that the reference letters and the documentation pertaining to the petitioner's exhibitions and activities are sufficient to meet this criterion. The preceding letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility.

See id. at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an artist who has made original contributions of “major significance.” Without supporting evidence showing that the petitioner’s work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

states that the petitioner’s “academic research . . . was published in limited editions by the in 1991.” The record, however, does not include documentary evidence of the petitioner’s scholarly articles. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that evidence of his scholarly articles do not exist or cannot be obtained. Further, letter does not equate to secondary evidence or an affidavit.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

The petitioner submitted a self-serving “List of juried individual and group exhibitions in (1984-1996).” The self-serving claims in the petitioner’s list are not sufficient to meet the burden of proof for this regulatory criterion. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R.

§ 103.2(b)(2)(ii). The petitioner has not established that evidence of his juried individual and group exhibitions in [REDACTED] do not exist or cannot be obtained. Further, his self-serving list does not equate to secondary evidence or affidavits.

On appeal, the petitioner submits a promotional flyer announcing the December 16, 2007 Open House of his [REDACTED]. This event post-dates the petition's July 27, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's December 16, 2007 Artpars exhibition in this proceeding.

The petitioner has documented the exhibition of his work at his [REDACTED]

[REDACTED] Accordingly, the petitioner has established that he meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). However, certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

On appeal, counsel argues that the petitioner performs in a leading or critical role for the [REDACTED]. As previously discussed, the petitioner submitted documentation identifying him as founder, president, and a member of the board of directors of the [REDACTED] but there is no evidence showing that the [REDACTED] has a distinguished reputation in the arts. Moreover, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) expressly requires evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural. Therefore, even if we found that the [REDACTED] has a distinguished reputation, which we do not, a leading or critical role in a single distinguished organization does not meet the plain language of the regulation. Accordingly, the petitioner has not established that he meets this criterion.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a

“level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) – (viii).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the petitioner has not established that judging art exhibitions for the [REDACTED] and performing his responsibilities as president of the [REDACTED] demonstrate sustained national or international acclaim or a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). There is no evidence documenting the reputations of the [REDACTED] and the [REDACTED] art exhibitions involving the petitioner. Without supporting evidence demonstrating the significance and prestige of the events in which the petitioner participated as a judge of the work of others, we cannot conclude that his involvement was indicative of sustained “national or international acclaim” at the very top of the visual arts field.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(vii), it should be emphasized that a visual artist does distinguish himself as among that small percentage who have risen to the very top of the field simply by arranging for his work to be displayed. Moreover, the statute and regulations require the petitioner to demonstrate “sustained national or international acclaim” in his field of endeavor. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The petitioner has not established that displaying work at his [REDACTED] in the [REDACTED] from 2001 to 2003 and the [REDACTED] in 2007 demonstrates sustained national or international acclaim or a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). In this case, there is no indication that the petitioner’s works have consistently been featured along side those of artists who enjoy national or international reputations, that he has regularly participated in exhibitions at significant venues devoted primarily to the display of his work alone, or that his exhibited work has been singled out for critical acclaim beyond the local communities where he resided. The evidence submitted by the petitioner for 8 C.F.R. § 204.5(h)(vii) is not sufficient to demonstrate a level of distinction that sets his art exhibitions apart from those of most other artists in his field nationally or internationally.

While the petitioner has earned the respect and admiration of her references, the evidence of record falls short of demonstrating his sustained national or international acclaim as an artist. The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.